
DEPARTMENT OF STATE REVENUE
Revenue Ruling #2008-12 ST
September 22, 2008

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ISSUES

Sales/Use Tax – Sales of Merchandise by Nonprofit Organization Ticket Sales to Entertainment Events Held During Conventions Admissions Tax – Ticket Sales to Entertainment Events Held During Conventions

Authority: [IC 6-2.5-5-26](#); [IC 6-2.5](#); [IC 6-9-13](#)

The taxpayer requests the Department to rule on the following issues.

1. Is the organization's sale of merchandise subject to sales tax?
2. Is the organization required to pay, collect or remit sales tax on its sales of tickets to concerts, rodeos, and other special entertainment events held during its annual convention?
3. Is the organization required to pay, collect, or remit admissions tax on its sales of tickets to concerts, rodeos and other special entertainment events held during its annual convention?

STATEMENT OF FACTS

The taxpayer, a nonprofit organization is a federally chartered corporate entity empowered to achieve many purposes. Among these purposes are to train young men and women for useful citizenship; foster patriotism; development competent and aggressive leadership; procure and distribute official supplies and equipment of the organization; provide prizes and awards; and engage in other activities that the organization's governing body determines to be consistent with Congress' specified purpose.

At its annual convention, the organization and its members carry out the purposes Congress has directed the organization to pursue. The organization's members are taught parliamentary procedure, public speaking and lessons of leadership as they engage in self-government during numerous convention sessions and activities.

The organization sells a variety of merchandise, including dress and casual apparel, accessories, caps, gift items, chapter supplies, banquet supplies, awards, handbooks and educational materials. Most of the items carry a registered trademark, trade name, or slogan of the organization. Sales are made year-round with the organization taking orders by phone, mail, email or online and filling the order from its Indianapolis facility. Orders are then shipped to locations around the country including Indiana. The vast majority of these sales are to organization Participants. The term "Participants" as used in this ruling means members, teachers, educators, staff, chaperones and invited speakers and guests of the organization.

As part of its annual convention held in Indianapolis, the organization puts on special entertainment events for Participants. The events are not advertised to the public.

DISCUSSION

Sales of Merchandise

The type of merchandise sold by the organization is reflected in three catalogues. One catalogue contains apparel, accessories and gifts; another catalogue contains chapter, banquet and award supplies; and the third contains handbooks and education materials.

There are official dress codes for members depending on the type of activity in which they are participating. Wearing clothing with the organization trademark, slogan or other identifier creates a sense of involvement and participation for members. Gift items in the catalogues may also be used as prizes for members participating in various competitions and educational programs. In addition to year-round sales of from its catalogues, during the organization's annual convention, an area referred to as the mall is set up in a convention center or similar venue. The merchandise the organization sells in the mall is the same type that is found in the catalogues. Convention registration materials include an option to register for a mall pass, and such a pass is required for entrance into the mall.

[IC 6-2.5-5-26\(b\)\(1\)](#) states:

(b) Sales of tangible personal property are exempt from the state gross retail tax, if:

1. the seller is an organization described in section 21(b) of this chapter;
2. the seller is not operated predominantly for social purposes;
3. the property sold is designed and intended primarily either for the organization's educational, cultural, or religious purposes, or for improvement of the work skills or professional qualifications of the organization's members; and
4. the property sold is not designated or intended for use in carrying on a private or proprietary business.

It is clear from the above statute that the organization's sales of tangible personal property to be exempt from the sales/use tax, the sales must be made both in the furtherance of the educational purpose of the organization and not sold in carrying on a private or proprietary business.

All the tangible personal property sold by the organization is used for organizational purposes consistent with the taxpayer's purpose of organization. Further, all items are predominately sold to Participants such as members, leaders and others involved with the organization; therefore the organization is not carrying on a private or proprietary business. The organization's sales of merchandise are not subject to the sales/use tax.

Taxability of Special Events at the Convention

At each annual convention, the organization arranges for and puts on special concerts, and other entertainment events for members and other convention Participants. When the convention is held in Indiana, all entertainment events are held in Marion County and are held in the Pepsi Coliseum, Convention Center, Conseco Fieldhouse, and Lucas Oil Stadium.

Entertainment events are not advertised to the public. Admission to an entertainment event is not included in general convention registration fees, and only those Participants holding a ticket to the entertainment event are admitted. The organization sells the tickets directly to the organization Participants, and they are not sold from any box office or through any authorized agent of the facility in which the entertainment event is being held.

The organization's agreements with the entertainers performing stipulate that the entertainment events are closed to the public, and ticket prices for the entertainment events are substantially less than prices charged to the public for regular performances by these entertainers.

No sales tax is imposed or charged by the organization to purchase the special event tickets, and the Participant purchasing an entertainment event ticket pays for a ticket without any portion of the ticket price designated as sales tax.

The organization has in the past paid Indiana sales tax on its proceeds from entertainment event tickets, erroneously believing that it owed such tax.

[IC 6-2.5-2-1](#) imposes a sales tax on retail transactions in Indiana. [IC 6-2.5-4-1](#) provides that a retail transaction generally means the transfer of tangible personal property for consideration, with the tangible personal property having been acquired by the seller for the purpose of resale and the transfer being made in the ordinary course of the seller's trade or business. Indiana law does not contain any provisions imposing sales tax on the provision of entertainment including admission to concerts.

The organization's sale of a ticket for admission into an entertainment event, like the entertainment events held by the organization is not subject to sales tax because it is not a retail transaction and the organization's payment of tax on the proceeds from such ticket sales in the past was erroneous.

Entertainment Events Not Subject to Marion County Admissions Tax

[IC 6-9-13-1](#) authorizes Marion County to adopt an admissions tax. The admissions tax is imposed on the privilege of attending any event with the following characteristics:

- (1) held in a facility financed in whole or in part by:
 - (A) bonds or notes issued under [IC 18-4-17](#), [IC 36-10-9](#), or [IC 36-10-9.1](#); or
 - (B) a lease or other agreement under [IC 5-1-17](#); and
- (2) to which tickets are offered for sale to the public by:
 - (A) the box office of the facility; or
 - (B) an authorized agent of the facility.

The admissions tax is not applicable to tickets to entertainment events because those tickets are not offered for sale to the public. The entertainment events presented by the organization are not open for anyone to attend. Admission is controlled by the organization and limited to Participants. Furthermore, tickets to entertainment events are not offered for sale by the facility box office or an authorized agent of the facility.

Admission to entertainment events does not come within the purview of the Marion County admissions tax and the organization should not pay, collect or remit the admissions tax on entertainment event tickets.

RULING #1

Are the organization's sales of merchandise subject to the sales/use tax?

The organization's sales of merchandise through the catalogue, mail, email and the Internet are not subject to sales/use tax. Sales of merchandise by the organization at the mall are not subject to the sales/use tax.

RULING #2

Is the organization required to pay, collect or remit sales tax on the sales of tickets to concerts, rodeos, and other special entertainment events held during its annual convention?

The organization's sale of a ticket for admission into an entertainment event, like the entertainment events held by the organization is not subject to sales tax because it is not a retail transaction and the organization's payment of tax on the proceeds from such ticket sales in the past was erroneous.

RULING #3

Is the organization required to pay, collect or remit admissions tax on the sales of tickets to concerts, rodeos, and other special entertainment events held during its annual convention?

Admission to entertainment events does not come within the purview of the Marion County admissions tax and the organization should not pay, collect or remit the admissions tax on entertainment event tickets.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and

circumstances, as stated herein are correct. If the fact and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

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